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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 04/15/2003

18

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/755,408

Applicant(s)

NURSE, ROBERT I.

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,8-14,16,17 and 21-34 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5,8-14,16,17 and 21-34 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 12.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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omit The drawing objection and the 112, first paragraph rejection have been withdrawn for the following reason: Insofar as applicant has defined the term "strut" to be broader than the word "panel" by stating that the strut 42 may be disposed in the form of a panel (see specification page 6, lines 15-23 and drawing Fig. 2-5). As noted by applicant, the applicant is allowed to be his own lexicographer. For this application, the term "strut" is understood to include a panel. Therefore, any reinforcing panel shown by a reference will read on a strut as claimed by applicant.

keep The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on March 23, 2003 have been disapproved because they introduce new matter into the drawings. 37 CFR 1.121(a)(6) states that no amendment may introduce new matter into the disclosure of an application. The original disclosure does not support the showing of the thin strip designating a strut 42 and the rounded end 46 as shown in Fig. 6 and 7.

The substitute specification filed March 23, 2003 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The first three lines of paragraph No. 27 on page 6. The substitute specification has not been entered.

omit Claim 33 is objected to because it is improperly dependent upon itself.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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omit Claim 33 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

omit Claim 33 is improperly dependent upon itself. The scope of claim 33 can't be determined.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 10-13, 16, 17, 21-24, 28-31, 33 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Nichols and Artusi.

Nichols discloses a container comprising an inner tank (30) and outer container (11), the container having a plurality of upstanding sidewalls (sidewalls of inner tank 30) interconnected by a floor pan (floor of inner tank 30), at least one pair of opposing sidewalls being reinforceable with removable reinforceable panels (sidewalls 20 and 22 are removable from attachment to the inner tank 30), the reinforceable panels being reversibly transformable between a first upright position up against the sidewalls of inner tank 30 where they reinforce the sidewalls and a second folded position where they do not reinforce the sidewalls of inner tank 30, the reinforceable panel being removable from the sidewall without separation from the container, the bottom wall 12 defines a floor pan support, each reinforceable panel is articulably joined by a hinge to the sidewall about a bottom proximal end juxtaposed with the floor pan. The struts of claims 1-4, 10-13, 16 and 17 are defined by the reinforceable panels.

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Artusi discloses a container comprising an inner tray (2) and outer blank (1), the container having a plurality of upstanding sidewalls (sidewalls of inner tray) interconnected by a floor pan (floor of inner tray), at least one pair of opposing sidewalls being reinforceable with removable reinforceable panels (sidewalls 7 or 8 are removable from attachment to the inner tank 30), the reinforceable panels being reversibly transformable between a first upright position up against the sidewalls of inner tray where they reinforce the sidewalls and a second folded position where they do not reinforce the sidewalls, the reinforceable panel being removable from the sidewall without separation from the container, the bottom wall 4 defines a floor pan support, each reinforceable panel is articulably joined by a hinge to the sidewall about a bottom proximal end juxtaposed with the floor pan. The struts of claims 1-4, 10-13, 16 and 17 are defined by the reinforceable panels.

Claims 1, 10-13, 21 and 28-31 are rejected under 35 U.S.C. 102(b) as being anticipated by British reference No. ('514) to Harrison.

Harrison discloses a container comprising a plastic inner container (10) and outer cardboard case (26), the container having a plurality of upstanding sidewalls (sidewalls of inner container 12-18) interconnected by a floor pan (base 20), at least one pair of opposing sidewalls being reinforceable with removable reinforceable panels (sidewalls 28 and 32 or 30 and 34 are removable from attachment to the inner container), the reinforceable panels being reversibly transformable between a first upper position up against the sidewalls of inner container where they reinforce the sidewalls and a second lower position where they do not reinforce the sidewalls of inner container, the reinforceable panel being removable from the sidewall without separation from the container, the bottom wall 36 defines a floor pan support.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 8, 9 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nichols or Artusi in view of Harrison.

Nichols and Artusi disclose the invention except for the tab/slot arrangement. Harrison teaches the tab/slot arrangement with tabs on the sidewall and slots on the reinforceable panel/strut. It would have been obvious to modify the mesh construction wall of Nichols to accept tabs placed on the sidewall of the inner tank to secure the sidewall and reinforceable panel strut. It would have been obvious to modify the reinforceable panel/strut of Artusi to have slots to accept tabs placed on the sidewall of the inner tray to secure the sidewall and reinforceable panel strut. A securement would be motivated by a need to minimize movement of the sidewall with respect to the reinforceable panel/strut to prevent wear and by a need to align the reinforceable panel/strut to properly reinforce the sidewall. The notches claimed read on the slots which can be gripped. It would have been obvious to add additional slots in order to improve grip and handling of the reinforceable panels/struts.


Claims 14 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Artusi or Harrison. Artusi and Harrison each disclose the invention except for the cardboard is not fluted cardboard. Fluted cardboard is well known. It would have been obvious to substitute fluted cardboard for non-fluted cardboard in order to improve buckling strength of the cardboard.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc
April 14, 2003